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**MEMO ENDORSED**

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January 2, 2013

**BY EMAIL**

Judge Ronnie Abrams  
United States District Judge  
United States District Court,  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: Kaplan v. United Healthcare Ins. Co. of New York, 12 Civ. 7610

Dear Judge Abrams:

This firm represents the plaintiff in this matter. We are writing to request an immediate conference with the Court to discuss the supplementation of the complaint and the consequent revision of the discovery schedule.

As Your Honor will recall, plaintiff alleges in his complaint that defendants have breached their obligations under the Empire Plan Mental Health and Substance Abuse Program (the "Plan") by refusing to reimburse plaintiff for all of his outpatient treatment. However, after the pleadings were finalized and after this Court issued its scheduling order, dated December 3, 2012, defendants, in letters to plaintiff in mid-December, announced that even though they have determined that plaintiff is disabled by reason of mental illness within the meaning of the Plan, they will not reimburse plaintiff for *any* of his outpatient treatment. Accordingly, plaintiff's complaint must now focus on this complete denial of coverage by defendants.

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However, defendants, despite their complete denial of coverage, have refused to consent to the proposed supplementation of plaintiff's complaint to include their complete denial of coverage. Thus, unless this Court directs defendants to consent to the supplementation of the complaint, plaintiff will be forced to make a motion for this relief. Under the scheduling order, depositions have to be completed by March 12, 2013 and the current cutoff for fact discovery is March 29, 2013. Thus, a motion to supplement the complaint may not even be decided until after the expiration of those deadlines. Thus, as the result of defendants' bad-faith conduct, plaintiff may be forced to incur the expense of discovery before the most critical issue even becomes a part of this case.

Accordingly, plaintiff requests that a conference be scheduled as soon as possible to address these issues.


Respectfully submitted,

  
Robert M. Kaplan

cc: Michael H. Bernstein, Esq. (by email)

A telephone conference has been scheduled for January 11, 2013 at 10:30 a.m. to discuss Plaintiff's request. Defendants may file a responsive letter, not to exceed two (2) pages, by January 8, 2013.

SO ORDERED:

  
HON. RONNIE ABRAMS  
UNITED STATES DISTRICT JUDGE

1/4/13